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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,179	01/12/2004	Sandra Parkington	47973.2.1	2086
22859 7590 09/08/2010 INTELLECTUAL PROPERTY GROUP FREDRIKSON & BYRON, P.A. 200 SOUTH SIXTH STREET, SUITE 4000 MINNEAPOLIS, MN 55402				
			EXAMINER RAJAN, KAI	
			ART UNIT 3769	PAPER NUMBER
			MAIL DATE 09/08/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/756,179

**Applicant(s)**

PARKINGTON, SANDRA

**Examiner**

Kai Rajan

**Art Unit**

3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Examiner acknowledges the response filed June 28, 2010.

#### ***Response to Arguments***

Applicant's arguments have been considered but are not persuasive. Applicant contends: 1) the applied prior art fails to disclose a calculation of total daily points determined by a preset ratio; 2) the prior art fails to disclose determining points based on sodium independent of other factors; and 3) the inclusion of sodium in the calculation of points (as rendered obvious by the Examiner in the previous action) would invalidate the equations used in the prior art reference. The Examiner respectfully disagrees for the following reasons:

Regarding the first point, Miller-Kovach disclose calculating daily allotment points based on body weight and physical activity using a computer (Column 4 lines 17 – 44). The points calculated are directly correlated to amounts of calories and nutritional parameters of food as shown throughout the reference in point calculation equations. Since those equations have linear relationships between the number of points and each parameter, each parameter has a preset ratio. For example, in the equation on line 30 of column 3, assuming constants K1 and K2 to be 2, each of factors “c” and “f” are weighted equally as 50:50 parts of the point calculation.

Regarding the second point, the Examiner notes that while the claims are drawn to sodium monitoring, the independent claim does not explicitly or implicitly exclude other factors in the determination of daily points. Therefore, prior art using additional factors besides sodium are sufficient to reject the claim. Furthermore, regarding the third argument, the prior art states in column 3 lines 24 – 26 that while the reference discusses saturated fat as the parameter used

for point calculation, the invention is not restricted, and other parameters such as sugar content may be used. In light of this teaching in the prior art, additional parameters such as sugar stated by Miller-Kovach or sodium would not render the calculation invalid. As stated below, sodium is a well known parameter of diet monitoring and therefore would be obvious to use sodium as a parameter in the calculation of daily point allotment.

In light of the teachings of the prior art and the response above, the applied prior art is sufficient to reject the claims as currently presented.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 – 4 and 7 – 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller – Kovach et al. U.S. Patent No. 6,436,036 B1.**

Regarding claim 1, Miller – Kovach et al. disclose a method for tracking sodium intake comprising the steps of:

a. determining an amount by weight, of a standard measurement system, of dietary sodium a subject is allowed to consume during an intake period, the amount being specific to a particular subject (Column 3 lines 1 – 12 determining maximum point allotments based on body weight, where points are directly correlated to nutrients);

b. converting the amount by weight of dietary sodium so determined into intake points by use of a preset ratio of the amount by weight of the standard measurement system to intake points, the conversion being performed by a processor and the preset ratio being programmable into the processor, the preset ratio resulting in a total number of the intake points the subject is allowed to consume during an intake period that is one or two digits long (See figure 8a, where a slide rule is shown that correlates weights and amounts of nutrients to point values, with a constant ratio of points to nutrients);

c. selectively displaying on a display a conversion scale listing the relationship between multiple intake point values and the corresponding amounts by weight of dietary sodium, the multiple relationships being displayed simultaneously and being based on the preset ratio, the display operatively connected to the processor (See figure 8a, where a slide rule is shown that correlates weights and amounts of nutrients to point values, with a constant ratio of points to nutrients, column 7 lines 3 – 6 the same conversion may be performed by a computer, column 8 lines 49 – 50);

d. determining the amount by weight of the standard measurement system of dietary sodium in a portion of food that will be consumed by the subject (Column 3 lines 64 – 67, column 4 lines 1 – 16 using the slide rule to determine the point value for food consumed);

e. selectively entering into the processor the number of intake points associated with the portion of food that will be consumed or the amount by weight of the standard measurement system of dietary sodium in a portion of food that will be consumed, such entry into the processor of the number of intake points or the amount by weight of dietary sodium being user-selectable (Column 9 lines 5 – 20 identifying the number of points for particular foods, column 9 lines 21 – 67, column 10 lines 1 – 31 storing point values for consumed food);

f. converting the amount by weight of the standard measurement system of dietary sodium in the portion of food to be consumed to intake points by use of said preset ratio (Column 9 lines 5 – 20 identifying the number of points for particular foods, column 9 lines 21 – 67, column 10 lines 1 – 31 storing point values for consumed food);

g. maintaining a running sum of intake points which are equivalent to dietary sodium consumed by the subject during the intake period (Column 10 lines 32 – 35 total points accumulated stored); and

h. displaying as an output the running sum of intake points on the display (Column 10 lines 16 – 19 displaying accumulated points).

Miller-Kovach et al. disclose a system for monitoring diet by correlating point values to amounts of fat, fiber, and calories consumed. Miller-Kovach et al. fail to disclose accounting for sodium consumed. However, it would have been obvious to one of ordinary skill in the art of diet monitoring at the time the invention was made to modify the invention of Miller-Kovach to account for sodium as well, since Miller-Kovach states that other dietary factors may include, but are not limited to, sugar content, and it is well known that, like sugar, sodium is a commonly monitored and regulated nutrient for weight loss.

See previous action for rejection of unaddressed claims, as they are rejected on substantially the same basis.

**Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller – Kovach et al. U.S. Patent No. 6,436,036 B1 as applied to claim 1 above, further in view of Cosentino et al. U.S. PGPub No. 2006/0064030 A1.**

In regards to claims 6 and 7, Miller-Kovach et al. disclose monitoring the weight loss of an individual, yet fail to teach consulting a specialist when the rate of weight loss is too high. However, Cosentino et al. a reference in an analogous art of physiological health monitoring teach the consideration of different lifestyle and physiological factors of an individual, and based on those factors referring the individual to a health care professional. The art teaches that follow-ups with a medical professional may be necessary depending on the success or failure of weight loss / management routines (Cosentino et al. paragraph 0181). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Miller-Kovach et al. to provide an indication or advisory notice to an individual to seek medical attention under certain conditions, Cosentino et al. teach the well known fact that certain symptoms and conditions that may be hazardous to an individual's health require special medical attention (Cosentino et al. paragraph 0181).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/  
Examiner, Art Unit 3769

/Henry M. Johnson, III/  
Supervisory Patent Examiner, Art Unit  
3769

September 3, 2010